



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
CIVIL RIGHTS

**CERTIFIED MAIL # 7000 1670 0002 9182 9549**  
**RETURN RECEIPT REQUESTED**

**In Reply Refer to:**  
**EPA File No: 2R-00-R9**

Ellen Garvey  
Air Pollution Control Officer  
Bay Area Quality Management District  
939 Ellis St.  
San Francisco, CA 94109-7799

**Re: Partial Acceptance of Administrative Complaint**

Dear Ms. Garvey:

On April 17, 2000, Mr. Michael E. Boyd filed a complaint with the U.S. Environmental Protection Agency, Office of Civil Rights, on behalf of CALifornians for Renewable Energy, Inc. The complaint alleges violations of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, and EPA's regulations implementing Title VI found at 40 C.F.R. Part 7 by the California Energy Commission, Bay Area Air Quality Management District and the California Air Resources Board in their approval of the Pittsburg District Energy Facility (CEC docket 98-AFC-1) and the Delta Energy Center (CEC docket 98-AFC-3). The complaint also alleges that discriminatory effects resulted from the review and oversight of the Pittsburg District Energy Facility and Delta Energy Center projects by the U.S. EPA Region 9 Air Division and the review of the PSD permit for the Delta Energy Center, docket number PSD-99-76, by the Environmental Appeals Board. The purpose of this letter is to inform you that the complaint has been partially accepted for investigation by EPA.

The complaint specifically alleges that actions by recipients relative to the Pittsburg District Energy Facility and Delta Energy Center projects will inflict "disparate impacts from criteria pollutants" on low income and minority populations which "already suffer elevated levels of occurrences of asthma, and breast cancer, along with increased human mortality attributable to particulate matter exposure." The complaint also alleges that the Pittsburg community "experience[s] these affects disparately in comparison to non-minority non-low income populations within Contra Costa Community and in the surrounding counties.

Under Title VI, a recipient of federal financial assistance may not discriminate on the basis of race, color, or national origin. Pursuant to EPA's Title VI implementing regulations, OCR conducts a preliminary review of Title VI complaints for acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). The complaint meets all of the jurisdictional requirements in 40 C.F.R. Part

7 with respect to CARB and BAAQMD. First, the complaint is in writing. 40 C.F.R. § 7.120(b)(1). Second, the complaint alleges that the approval of the Pittsburg District Energy Facility CEC and the Delta Energy Center will cause disparate impacts in violation Part 7 as described above. 40 C.F.R. § 7.120(b)(1). Third, the alleged discriminatory acts occurred on October 25, 1999, the approval date of Pittsburg, and March 22, 2000, the approval date of Delta, both of which are within 180 days of the date on which the complaint was filed with EPA. 40 C.F.R. § 7.120(b)(2). Fourth, CARB and BAAQMD were recipients of EPA financial assistance at the time of the alleged discriminatory act. 40 C.F.R. § 7.15. Based on these facts, the complaint is accepted for investigation with respect to the allegations described above against CARB and BAAQMD.

The complaint does not meet the jurisdictional requirements in 40 C.F.R. Part 7 with respect to CEC, EPA Region 9 Air Division and the EAB. The CEC is not a recipient of EPA funding and neither the EPA, including its Regional Offices, nor the EAB are subject to Title VI or Part 7. Based on these facts, the allegations against the CEC, EPA Region 9 Air Division and the EAB are rejected.

EPA's Title VI regulations provide that OCR must attempt to resolve complaints informally whenever possible (40 C.F.R. § 7.120(d)(2)). Accordingly, OCR will discuss, at any point during the process, offers to informally resolve the complaint, and will, to the extent appropriate, facilitate an informal resolution process with the involvement of affected stakeholders. At this time, the complaint is already undergoing an informal resolution process with Ms. Joann Asami. Please contact Ms. Asami at (415) 972-3929 if you have any questions regarding this process.

If you have any questions, please contact Eva Hahn by phone at (202) 564-8186, or by mail to the U.S. EPA, Office of Enforcement and Compliance Assurance (Mail Code 2201A), Title VI Task Force, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

Karen D. Higginbotham  
Acting Director

cc: Michael E. Boyd  
Californians for Renewable Energy  
(b) (6) Privacy

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